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sary culpability may be drawn from a closer analysis of the intent here presented. In fact the intent is twofold — being primarily to publish the letter to the friend, and secondarily to injure the plaintiff by publishing the libel. If the letter had been sent to one newspaper, and it were intercepted and published by another, surely the main intent being to publish, and the method of publication secondary, culpability would ensue. Whether, in the principal case, the secondary intent to injure by the publication is sufficiently strong to create liability, is a question of degree. *Cf. Fox v. Broderick*, 14 Ir. C. L. Rep. 453.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — SENDING CARD OF RIVAL UNDERTAKER TO FAMILIES IN WHICH THERE IS SERIOUS ILLNESS. — Hughes and the defendant were rivals in the undertaking business, having no other local competitors. The defendant printed and sent to families in which there was at the time serious illness the following card: "Bear in mind our Undertaking Department. Satisfaction guaranteed. [Signed] H. L. Hughes." Hughes sues for libel. *Held*, that defendant's demurrer be overruled. *Hughes v. Samuels Bros.*, 159 N. W. 589 (Ia.).

The written statement in this unique case, plus its necessary implications, amounts to this: "I, [the plaintiff], solicit your business by this card." Such a statement is certainly untrue, and is made with malice; but it apparently does not come within the generally accepted limits of libelous words, since, taken by itself, it can injure neither the plaintiff's reputation nor his business. See ODGERS, LIBEL AND SLANDER, 5 ed., 2. It becomes libelous, however, because of an extrinsic circumstance, the time at which it is published. But any statement must need extrinsic circumstances to become a libel. An accusation of theft, for instance, is libelous only because of that extrinsic circumstance, the institution of private property. Accordingly it is submitted that what extrinsic circumstances are incorporated into a written statement is merely a question of degree, and that the statement in the principal case is rightly held libelous. *Morrison v. Ritchie & Co.*, [1902] 4 Sc. Sess. Cas. 645. *Cf. Rocky Mountain News Printing Co. v. Fridborn*, 46 Colo. 440, 104 Pac. 956; *Fitzpatrick v. Age-Herald Pub. Co.*, 184 Ala. 510, 63 So. 980; *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 220, 50 S. E. 68, 81. In the principal case the court rests the decision upon the broad principle that to injure another intentionally without justification is a tort, and, where the instrument of injury is the publication of written words, a libel. Thus the law of libel is at once rationalized and made an integrated part of our modern law of torts. See 29 HARV. L. REV. 559. The principal case is perhaps the first to announce such a doctrine of libel, formerly only an action on the case having been allowed for such torts as these. ODGERS, LIBEL AND SLANDER, 5 ed., 77 *et seq.* But whether or not the case is properly called one of libel, recovery is justified. For there is certainly intended injury, justified if at all by competition; and competition by means of telling lies is hardly to be protected.

MARRIAGE — NULLIFICATION — RIGHT TO DISCONTINUE ACTION FOR ANNULMENT. — A husband brought a bill for the annulment of his marriage. Subsequently he moves for leave to discontinue the action. *Held*, that the motion be denied. *Ginther v. Ginther*, 56 N. Y. L. J. 132 (Sup. Ct., App. Div.).

A suitor has a right before the final decision to discontinue any action or proceeding instituted by him, if no rights have accrued to others. *In re Butler*, 101 N. Y. 307, 4 N. E. 518. But where there is a public interest in the correct adjudication of the controversy the court may refuse to allow leave to abandon the action. So one who contests an election is refused permission to discontinue his contest. *Miles v. Macon*, 188 S. W. 313 (Mo.). See 24 HARV. L. REV. 673. In divorce suits the rights of the parties to the record are not alone to be con-

sidered; the public also has an interest in seeing that no divorce shall be granted without proper cause. *Murphy v. Murphy*, 8 Phila. (Pa.) 357; 2 BISHOP, MARRIAGE & DIVORCE, § 230. So a divorce will not be granted on failure of the defendant to appear, or on admissions in his pleadings, unless the plaintiff's charges are sustained by proof. *Hill v. Hill*, 24 Ore. 416, 33 Pac. 809; *Iverson v. Iverson*, 29 Misc. 240, 61 N. Y. Supp. 118. But, since public policy requires the quiet and peaceable termination of marital strife, ordinarily the plaintiff is entitled to discontinue such a suit. *Moore v. Moore*, 22 N. Y. Supp. 451; *Stover v. Stover*, 7 Idaho 185, 61 Pac. 462; *Ashmead v. Ashmead*, 23 Kan. 262. Where, however, in divorce suits the validity of the marriage, and hence the legitimacy of the issue and the status of subsequent marriages, is involved, there is a strong public interest in the correct adjudication of the matter; and courts do not allow as a matter of course dismissal of the bill. *Winans v. Winans*, 124 N. Y. 140, 26 N. E. 293; *Winston v. Winston*, 21 App. Div. 371, 47 N. Y. Supp. 399. The situation ordinarily presented by suits for annulment is the same; and the court should, as the principal case holds, be able within its discretion to refuse leave to discontinue.

MECHANICS' LIENS — PRIORITY OVER MORTGAGES FOR PURCHASE MONEY TO PERSONS OTHER THAN THE GRANTOR. — A development company agreed by parol with a stockholder to convey a lot to him on consideration of the erection of a house thereon. The stockholder made a written contract with one Pettit to sell him the land, and Pettit agreed to build the house. When it was partially erected, the stockholder procured a conveyance from the company to Pettit, and the latter executed mortgages to the stockholder as security for the price agreed. Material furnished and labor performed in the construction of the house, chiefly prior to this time, not having been paid for, mechanics' liens were claimed. *Held*, that the liens take priority over the mortgages. *Everest v. Gault Lumber Co.*, 159 Pac. 910 (Okla.).

A mechanics' lien can only accrue against the owner of some interest in the property, legal or equitable. Since the agreement between the company and the stockholder was by parol, no equitable title passed to the latter, prior to the completion of the work agreed to. *Botsford v. New Haven, etc. R. Co.*, 41 Conn. 454. None could therefore pass to the sub-vendee. Now it is generally held that if a possessor having made improvements, later acquires title, the liens attach to the subsequently acquired interest. *Courtemanche v. Blackstone, etc. Ry. Co.*, 170 Mass. 50, 48 N. E. 937; *Weaver v. Sheeler*, 124 Pa. St. 473, 17 Atl. 17. But although the liens may thus relate back, they cannot actually accrue previous to the time when title is received. In the principal case, the passing of title and the giving of the mortgages were simultaneous acts. Under such circumstances a purchase-money mortgage generally takes priority over liens arising out of improvements made by the possessor. *Rochford v. Rochford*, 188 Mass. 108, 74 N. E. 299; *Moody v. Tschabold*, 52 Minn. 51, 53 N. W. 1023. But where the mortgagee is a person other than the grantor it would seem on principle that the liens should prevail. For the legal title must pass through the grantee-mortgagor, at least momentarily, in order to reach the mortgagee. In this brief passage the liens could attach. It has been held otherwise, however, so far as the mortgage is for an advance of purchase-money, on the theory that the mortgagor in substance never held more than the equity of redemption. *New Jersey, etc. Co. v. Bachelor*, 54 N. J. Eq. 600, 35 Atl. 745; *Campbell & Pharo's Appeal*, 36 Pa. St. 247. But the mortgagee cannot be preferred unless the interest of the grantor was free of the liens prior to the conveyance to the mortgagor. *McCausland v. West Duluth Land Co.*, 51 Minn. 246, 53 N. W. 464. Here the express stipulation of the grantor company that the work be done before it would convey, subjected its interest to the lien of the work when done. *Hill v. Gill*, 40 Minn. 441, 42 N. W. 294; *Paulsen v. Manske*, 126 Ill. 72, 18